

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

STEVEN LOVE LUNDY	:	
TRUST, c/o DIVINE ROSE,	:	
Trustee	:	
Plaintiff	:	CIVIL ACTION NO. 3:18-1246
	:	
v.	:	
	:	(MANNION, D.J.)
MONROE COUNTY DISTRICT	:	
ATTORNEY'S OFFICE, <u>et al.</u>,	:	
	:	
Defendants	:	

ORDER

Pending before the court is the report of Magistrate Judge Martin C. Carlson which recommends that the latest of the plaintiff's complaints be dismissed for failure to state a claim upon which relief can be granted.¹ (Doc. 5). With the time for doing so having passed, the plaintiff has not filed objections to Judge Carlson's report. Upon review, Judge Carlson's report will be adopted in its entirety.

The plaintiff filed the instant action presenting, as he has in the past, claims relating to his arrest and imprisonment. Judge Carlson recommends dismissal of the plaintiff's claims on a number of bases. Initially, Judge Carlson finds that certain named defendants, including the Pocono Mountain Regional Police Department and the Monroe County Correctional Facility, are

¹As discussed by Judge Carlson, this is the sixth *pro se* complaint filed by Mr. Lundy in recent months. (Doc. 5, p. 1, n. 1) (listing recent actions).

improper defendants pursuant to 42 U.S.C. §1983. Next, Judge Carlson finds that Younger² abstention applies to bar the plaintiff's claims requesting injunctive relief related to his pending state criminal action. Moreover, with respect to the judge and district attorneys named in the plaintiff's complaint, Judge Carlson finds that they are entitled to judicial immunity. Finally, as to the plaintiff's malicious prosecution claim, Judge Carlson finds that the plaintiff has no such claim unless his state law case has been resolved in his favor. Judge Carlson recommends that the complaint be dismissed for failure to state a claim upon which relief can be granted and, because any attempt to amend the claims would be futile, dismissal be without leave to amend.

When no objections are filed to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

²Younger v. Harris, 401 U.S. 37 (1971).

The court has reviewed the record in this case and finds no clear error of record. The court agrees with the sound reasoning which led Judge Carlson to conclude that the plaintiff's complaint fails to state a claim upon which relief can be granted and further agrees that any amendment to the complaint would be futile. Therefore, the court will adopt the report of Judge Carlson in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report of Judge Carlson, (Doc. 5), is ADOPTED IN ITS ENTIRETY.**
- (2) The plaintiff's complaint, (Doc. 1), is DISMISSED WITH PREJUDICE.**
- (3) The Clerk of Court is directed to CLOSE THIS CASE.**

Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: January 15, 2019

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